

## **REMARKS**

This response is submitted in reply to the Office Action mailed on March 9, 2006.

Claims 1-17 are pending in the patent application. Claims 1-13 have been withdrawn. No new matter has been added by this response.

Claims 14 and 16 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,878,470 to Kawamura et al. (“*Kawamura*”). Applicant submits that *Kawamura* is not prior art to the claimed invention under § 102(e) and therefore cannot be used to anticipate the claimed invention.

Section 102(e) states that a person shall be entitled to a patent unless:

(e) The invention was described in (1) an application for patent, published under § 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in § 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language; (Emphasis added).

Furthermore, 35 U.S.C. § 119 states that:

(a) An application for a patent for an invention filed in this country filed by any person who has, or whose legal representatives or assigns have, previously regularly filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States, or in a WTO member country, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application is filed within 12 months from the earliest date on which such foreign application was filed....(35 U.S.C. § 119).

As stated in MPEP § 2136.05, a 35 U.S.C. § 102(e) rejection can be overcome by antedating the filing date of the prior art reference by relying on the filing date of Applicant's

earlier foreign priority application or provisional application under 35 U.S.C. § 119. Applicant claimed priority to related Japanese Application No. 2002-227222 filed on August 5, 2002 in Japan, in a declaration submitted with the initially filed U.S. application. The present application was filed on August 4, 2003 and is therefore within the 12-month time period for claiming such priority. Additionally, Applicant previously submitted a certified copy of the foreign priority document which was received by the Patent Office as indicated in the Office Action mailed on March 9, 2006. Applicant can therefore rely on the filing date of the previously filed Japanese application which is August 5, 2002 to antedate the cited prior art references.

As stated above, claims 14 and 16 were rejected under § 102(e) based on *Kawamura*. The prior art filing date of *Kawamura*, under § 102(e), is the earliest U.S. filing date for *Kawamura* which is February 7, 2003. The U.S. filing date of *Kawamura* is after the earliest effective filing date of Applicant's application of August 5, 2002.

For at least these reasons, *Kawamura* is not prior art to Applicant's claimed invention under § 102(e) and therefore Applicant submits that claims 14-17 are in condition for allowance.

Claims 15 and 17 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2003/0129321 to Aoki ("*Aoki*"). Applicant respectfully submits that *Aoki* is not prior art to Applicant's claimed invention.

Under § 102(e) *Aoki* qualifies as prior art if *Aoki* is a published application under § 122(b) filed by another in the United States before Applicant's claimed invention. First, the inventor of U.S. Publication No. 2003/0129321 is Daigo Aoki, which is the same inventor of the present application. Therefore, Applicant submits that Publication No. 2003/0129321 does not qualify as prior art under § 102(e) because the inventors of this publication and Applicant's application are exactly the same and therefore the publication was not filed "by another" as

required under § 102(e). Second, the U.S. publication date of Publication No. 2003/0129321 is July 10, 2003, which is the earliest U.S. filing date of this reference. This date is after the earliest effective filing date of the present application which is August 5, 2002. Thus, Publication No. 2003/0129321 is not prior art under § 102(e).

For at least these reasons, Applicant submits that claims 15 and 17 are not anticipated by *Aoki* because *Aoki* does not qualify as prior art. Accordingly, claims 15 and 17 are in condition for allowance.

In light of the above, Applicant submits that claims 14-17 are patentable over the art of record because the cited art does not qualify as prior art to the claimed invention. Accordingly, Applicant requests that claims 14-17 be deemed allowable at this time and that a timely notice of allowance be issued in this case.

Respectfully Submitted,

Date: 7-10-06

SEYFARTH SHAW LLP  
55 East Monroe Street  
Suite 4200  
Chicago, Illinois 60603-5803  
Telephone: (312) 346-8000  
Facsimile: (312) 269-8869

  
Christopher S. Hermanson, Reg. No. 48,244

**CERTIFICATE OF MAILING**

I hereby certify that this paper is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date: 7/10/06

  
Irene Feigulov